THE
AMERICAN LAW REGISTER

FOUNDED 1852.

UNIVERSITY OF PENNSYLVANIA

DEPARTMENT OF LAW

SUBSCRIPTION PRICE, $3.00 PER ANNUM. SINGLE COPIES, 35 CENTS.

Published Monthly for the Department of Law by DANIEL S. DOREY, at 115 South Sixth Street, Philadelphia, Pa. Address all literary communications to the EDITOR-IN-CHIEF; all business communications to the TREASURER.

RESPONSIBILITY OF DIRECTORS OF CORPORATIONS FOR WRONGFUL ACTS. *Editor American Law Register:* The "Evening Post" of New York, in a note upon my article, "The Nature and Law of Corporations," 38 Am. Law Reg. (N. S.) 137, while agreeing generally with my conclusions and especially assenting to the statement that "the directors and not the stockholders should be held primarily liable for the wrongful acts of corporations," nevertheless goes on to say that "whatever considerations of equity or public opinion might seem to demand, nevertheless positive, written law compels the court to take the position that it is to the stockholders that third persons must look as the corporate body which has injured them. We do not think it would be safe to trust public

feeling in this matter; Mr. Williams would seem to suggest that we should;" concluding from this line of reasoning, although with what sequence it is difficult to see, that "the true remedy is not additional legislation, but care on the part of stockholders in the selection of directors and a lively interest in the management and conduct of corporations."

I agree with the "Post" that as a rule man can be made neither good nor happy by legislation, nor did I ever mean to suggest that public feeling could always be trusted, but I endeavor to point out that it is the *fact*, irrespective of either legislation or decisions of the court, that a commercial corporation is composed of its directors and not of its stockholders, and that, therefore, the feeling of the people that such is the case is correct, while the courts unfortunately have fallen into error.

The "Post" is also in error, I think, in its statement that the courts are controlled in this matter by statute; on the contrary, as a rule, I think, the statutes are entirely silent on the question and the courts are absolutely free (or were originally, although now possibly bound by their own decisions), to impose upon the directors their proper responsibility. What I recommended, therefore, was not an attempt to make directors of corporations good by statute, but merely by statute to confer upon the public the common law right of action against persons wronging them; even though such persons happen to be the directors of a corporation, and thus to correct the error of the courts.

The suggestion of the "Post" that the difficulty should be met by more careful selection of directors by stockholders is aside the question. What must be done is to impose upon directors their proper responsibility, so they will be compelled for their own protection to be careful in their corporate acts. As a rule the directors of corporations are men of good reputation and standing, the trouble is the public is deceived thereby, since in many cases the most respectable men seem to have no sense of personal responsibility when acting in a corporate capacity. It is a fact that the directors are the corporation and act as such; proper liability for their corporate acts *when wrongful* should be imposed upon them.

But the objection to the review by the "Post" really lies deeper. The writer thereof apparently failed to read with any care the first part of the article reviewed, wherein the nature of a corporation is discussed and the foundation laid for the future argument. If he had done so, he would have recognized that the conclusions followed as, of course, from such inquiry and that, therefore, any criticism of the former should be based on a criticism of the latter.

Henry W. Williams.

Baltimore; April, 10, 1899.

TAXATION; SITUS OF PERSONAL PROPERTY; INTERSTATE COMMERCE. A Statute of Utah authorizes a tax upon cars owned outside the state but temporarily within it. Acting under this law the

board of equalization of the state assessed and valued ten cars belonging to the Union Refrigerator Transit Company and the tax collector of Salt Lake County levied the tax apportioned to that county.

In order to avoid seizure of the cars the transit company paid the tax under protest and brought suit against the collector for recovery of same. *Union Refrigerator Transit Company* v. *Lynch, County Treasurer*, 55 Pac. (Utah) 639 (Dec. 10, 1898). The plaintiff claimed that the tax was illegally collected upon two grounds, first, that plaintiff being a citizen of Kentucky, having no place of business nor property within the State of Utah, except these cars transiently there for the purpose of delivering or receiving interstate freight and for no other purpose, that said cars had acquired no such *situs* within the borders of Utah as to give jurisdiction over them for purposes of taxation, and second, that such a tax is a regulation of interstate commerce and repugnant to the Federal Constitution. The defendant having demurred, the lower court sustained the demurrer and dismissed the action, and upon appeal this judgment was affirmed by the Supreme Court of Utah.

The court bases its decision as to cars having acquired a *situs* for purposes of taxation on two cases in the United States Supreme Court, *Pullman Palace Car Co.* v. *Penna.*, 141 U. S. 18 (1890), and *Adams Express Co.* v. *Ohio*, 165 U. S. 194 (1896), and refusal of the court to grant a rehearing in last case, *Adams Ex. Co.* v. *Ohio*, 166 U. S. 185 (1896). While this would seem decisive upon the point, an examination of these cases show that the question is a much closer one than would appear from the uniformity of the decisions. In *Pullman Palace Car Co.* v. *Penna.*, there was a vigorous dissenting opinion by Mr. Justice Bradley in which Mr. Justice Field and Mr. Justice Harlan concurred, while Mr. Justice Brown took no part in the discussion, not having been a member of the court when the case was argued.

In *Adams Ex. Co.* v. *Ohio*, a most elaborate and exhaustive dissenting opinion was delivered by Mr. Justice White in which Mr. Justice Field, Mr. Justice Harlan and Mr. Justice Brown concurred.

In the Pullman Case the majority of the court held a Statute of Pennsylvania valid, imposing a tax upon the capital stock of the Pullman Palace Car Company, taking as a basis of assessment such proportion of its capital stock as the number of miles of railroad over which its cars are run within the state bears to the whole number of miles in this and other states over which its cars are run. The court held that no general principles of law are better settled or more fundamental than that the legislative power of every state extends to all property within its borders, and that for purposes of taxation personal property may be separated from its owner, and he may be taxed on its account at the place where it is, although not the place of his own domicil, and even if he is not a citizen or a resident of the state which imposes the tax. Also that it is equally well settled that there is nothing in the Constitution or laws of the

United States which prevents a state from taxing personal property employed in interstate or foreign commerce like other personal property within its jurisdiction, and cites in support of these propositions, among others, the cases of *Gloucester Ferry Co.* v. *Penna.*, 114 U. S. 196 (1884); *Western Union Tel. Co.* v. *Attorney General of Mass.*, 125 U. S. 530 (1887), and *Morye* v. *B. & O. R. R.*, 127 U. S. 117 (1887).

The court explains the exemption of ships engaged in interstate or foreign commerce from local taxation by pointing out that commerce on sea is so different from commerce on land that the same rules cannot be applied to both, and that a ship registered under the laws of the United States at a particular port cannot acquire another *situs* merely by touching at another port. *Railroad Co.* v. *Maryland*, 21 Wall. 456 (1874), is cited as so ruling this question as well as *Harp* v. *Pacific Mail S. S. Co.*, 17 How. 596, and *Morgan* v. *Parham*, 16 Wall. 471 (1872). The court after showing that this tax is a tax on property engaged in interstate commerce, and not a tax on a privilege, or on the goods or persons carried, and is therefore within the power of the state, holds that the mode of assessing the proportion of the capital stock of the company represented by their personal property in use in the state is a reasonable and valid one and constitutional.

Mr. Justice Bradley, in his dissenting opinion, takes issue at once with the majority of the court on the broad proposition that all personal property within a state is subject to the taxing power of the state. The rules applicable to independent nations are not always applicable to the States of the Union. The rights of the states are in many things restricted by the Constitution, and the right of a state to tax interstate commerce is one of those restrictions. The learned justice concedes that all property, real or personal, within a state and belonging there may be taxed by the state, but when property does not belong in a state another question arises. To illustrate, he says: "a train of cars starts at Cincinnati for New York and passes through Pennsylvania, it may be subject to police regulations of that state, but it would be repugnant to the Constitution of the United States to tax it." Case of the *State Freight Tax*, 15 Wall. 232 (1872); *Coe* v. *Errol*, 116 U. S. 517 (1885). . . . But when personal property is permanently located within a state for the purpose of ordinary use or sale, then, indeed, it is subject to the laws of the state and to the burdens of taxation; as well when owned by persons residing out of the state as when owned by persons residing in the state. It has acquired a *situs* in the state where it is found."

The justice points out that personal as well as real property may have a *situs* independent of the owner's residence even when engaged in interstate or foreign commerce, as, for instance, an office with its furniture of a steamship or railroad line. Such property would be subject to the *lex rei sitæ* and to local taxation. But the ships or cars of those lines, being the vehicles of interstate

or foreign commerce, having no fixed or permanent *situs* or home, except at the residence of the owner, cannot be taxed without an invasion of the powers and duties of the Federal Government, except where they belong; authorities to this effect being *Hays* v. *Pacific Mail S. S. Co.*, 17 How. 596 (1854); *Morgan* v. *Parham*, 16 Wall. 471 (1872); *Trans. Co.* v. *Wheeling*, 99 U. S. 273 (1878). Mr. Justice Bradley then points out that the question involved in *R. R.* v. *Maryland*, 21 Wall. 446, cited by the majority of the court, was the power of a state over a corporation created by it, in reference to its rate of fares and the remuneration it was required to pay to the state for its franchises, and that the question of the *situs* of the property could not arise. The decision in *Gloucester Ferry Co.* v. *Penna.*, 114 U. S. 196, clearly holds that only the property of the corporation having a *situs* in the state is taxable there, such as the wharf and ferry house, but the vehicles of commerce coming into the state or capital of the corporation is exempt. The learned justice, therefore, emphatically asserts that while ships or railroad cars are not to be free from taxation, they are not taxable by those states in which they are only transiently present in the transaction of their commercial operations. If this were not so a train of cars running from New York to Chicago could be taxed by every state through which they ran.

In the second case cited by the Supreme Court of Utah as authority for its decision, namely, *Adams Express Co.* v. *Ohio*, 165 U. S. 194 (1896), the facts were as follows: A Statute of Ohio authorized the board of assessors, in appraising the property of express companies, to ignore the return of actual value of personal property by the company and to arrive at a basis of assessment by taking the value of the entire capital stock of the company, or entire value in money of the property of the company, and to return for taxation such proportion of same as may be fairly said to be represented by the value in money of the property within the State of Ohio. The Adams Express Company returned for taxation real estate valued at $25,170 and personal property consisting of horses, wagons, money, credits, etc., valued at $42,065. The board of assessors found their capital stock at its market value was worth about $16,000,000; that its gross receipts within the State of Ohio for the year had been $282,181, and that a fair proportion of its total property within the State of Ohio, valued in money, was $533,059.80. The Adams Express Company filed a bill in the United States Circuit Court to enjoin collection of the tax and the prayer was granted. The State Supreme Court subsequently having affirmed the validity of the law, the Circuit Court reversed its ruling and held that the assessments were valid. The Circuit Court of Appeals having affirmed the judgment of the Circuit Court, the case was taken to the United States Supreme Court.

Mr. Chief Justice Fuller delivered the opinion of the court, affirming the judgment of the Circuit Court of Appeals. This was not a regulation of interstate commerce, he held, because not a

tax on the company's business, but a tax on its property. All corporations engaged in interstate commerce should bear their fair share of the burdens of taxation, and as the court had repeatedly held in the case of railroads and telegraph companies that their property might be valued in the several states through which their lines or business extended, for purposes of taxation, by taking into consideration the uses to which it was put and all the elements making up aggregate value, and that a proportion of the whole fairly and properly ascertained might be taxed by the particular state without violating any Federal restriction, so in this case no more reason could be perceived for limiting the valuation of express companies to horses, wagons and furniture, than that of railroads, telegraph and sleeping-car companies, to roadbed, rails, ties, poles and wires, or cars. *The unity is a unit of use and management*, and the horses, wagons, safes, pouches and furniture; the contracts for transportation facilities; the capital necessary to carry on the business, whether represented by tangible or intangible property, in Ohio, possessed a value in combination and from use in connection with the property and capital elsewhere, which could as rightfully be recognized in the assessment for taxation in the instance of these companies as the others. The court then goes on to hold that the *situs* of the property thus taxed is in the State of Ohio and is, therefore, subject to its jurisdiction and its regulation, and cites, among other cases, *Pullman Palace Car Co.* v. *Penna.*, 141 U. S. 18.

Mr. Justice White, in the dissenting opinion, starts out by laying down two propositions which he designates as elementary: first, that the taxing power of one government cannot be lawfully exercised over property not within its jurisdiction or territory, and within the jurisdiction and territory of another; and, second, that no state has any right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subject of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on. He then points out that though the bill filed by the Adams Express Company set forth that the value of their personal estate within the State of Ohio was but $42,065, and the state by demurring admits this to be so, yet the company had been assessed for taxation upon a valuation of $533,095.80. The learned justice then says that this enormous increase in assessment must have been arrived at by going outside the state and taxing the capital stock of the corporation proportioned to the business done in the state to the entire business of the corporation. He directs attention to the language of the Supreme Court of Ohio in affirming validity of the law, in which they say: "The property of a corporation may be regarded in the aggregate as a unit, an entirety, as a plant designed for a specific object; and its value may be estimated, not in parts, but taken as a whole." And again, "If, by reason of the goodwill of the concern, or the skill, experience or energy with

which its business is conducted, the marked value of the capital stock is largely increased, whereby the market value of the tangible property of the corporation, considered as an entire plant, acquires a greater market value than it otherwise would have had, it cannot properly be said not to be its true value in money within the meaning of the constitution, because goodwill and other elements indirectly enter into its value." He then points out that in considering the question of taxation in *Postal Telegraph Cable Co.* v. *Adams*, 155 U. S. 688, the United States Supreme Court said, "The substance and not the shadow determine the validity of the exercise of the power," and says the learned justice, "testing the tax in controversy by the rule laid down in the Postal Telegraph Case, it becomes in reason impossible to conclude otherwise than that it is both in form and substance taxation by the State of Ohio of property beyond its jurisdiction, and that it is also an imposition by that state of a burden on interstate commerce."

Taking up the so-called *unit rule* as applied to railroad and telegraph companies, and treating such applications of the rule as *stare decisis*, he protests against its extension and shows that it could not apply to an express company. In the case of a railroad or telegraph company there is *physical unity*, but in case of an express company operating horses and wagons in different states the only *unity* is a *metaphysical one*. He illustrates the absurdity of such a metaphysical unity for purposes of taxation by supposing a banker in New York to open an agency in New Orleans, equipping an office with furniture worth $250. The assessor on his next visit would say to the agent, "It is true that your entire tangible property is but $250, but by reason of your use of certain elements of wealth in New York I will assess you at $1,000,000."

In conclusion, the learned justice protests against the argument that we have entered upon a new era requiring new and progressive adjudications, and unless the court admits the power of the State of Ohio to tax to be as claimed, it will enable aggregations of capital to escape just taxation by the several states. This assertion, he says, is as unsound as the fictitious assertion of expediency by which it is sought to be supported.

This decision was so far-reaching and so far in advance of any other decision relating to the *situs* of personal property for purposes of taxation, that the counsel in the case did not accept the decision as final, but asked for a rehearing. It will be noted that the court not only held that personal property situated in the state was subject to state taxation, but that this tangible property by reason of a *unity of use* can draw to it intangible property, and that both may be taxed.

The petition for a reargument was refused in *Adams Express Co.* v. *Ohio*, 166 U. S. 185 (1896), in which the court, after reiterating its opinion that this was not a regulation of interstate commerce but an exercise of the state of its right to tax the property of the express company, laid down as a rule "that the capital

stock of a corporation and the shares in a joint stock company represent not only tangible property, but also intangible property, including therein all corporate franchises and all contracts, privileges, and goodwill of the concern; and when, as in the case of the express company, the tangible property of the corporation is scattered through different states by means of which its business is transacted in each, the *situs* of this intangible property is not simply where the home office is, but is distributed where its tangible property is located and its work is done." The temper of the court in refusing the petition for reargument was apparently not the best, for they stated emphatically that "no fine-spun theories about *situs* should interfere to enable these large corporations, whose business is of necessity carried on through many states, from bearing in each state such burden of taxation as a fair distribution of the actual value of their property among those states requires."

The court also explained that "whenever separate articles of tangible property are joined together, not simply by unity of ownership, but in unity of use there is not unfrequently developed a property, intangible though it may be, which in value exceeds the aggregate value of the separate pieces of tangible property." It would almost seem from this that the court was ready to reverse Euclid, had such action upon its part been necessary for the decision in the case.

It will be seen, therefore, from the foregoing, that while the decision of the Supreme Court of Utah is supported by decisions of the highest court of the land, yet that court itself was far from unanimous in arriving at these decisions, and it is by no means improbable that at a later day, with a slight change in the membership of the court, the same question may be decided the other way.

CRIMINAL LAW; MANSLAUGHTER; SPIRITUAL TREATMENT OF DISEASE. After a lapse of twenty-two years the "Peculiar People" have added another instance of manslaughter to their long series of well meant homicides. The case of *Queen* v. *Senior* (Dec. 10, 1898), [1899] 1 Q. B. 283, is of unusual interest because of the altered positions assumed by the English court in regard to spiritual remedies when applied in lieu of medical aid. The first case of this nature arose in 1868, when parents were charged with manslaughter of a child because, pursuant to their belief as members of a sect called "Peculiar People," they failed to provide medical attentions for their infant when it was suffering from acute inflammation of the lungs. Instead, they prayed and anointed the child with oil, but notwithstanding these devotional exercises the child died. The court charged that there was a very great difference between neglecting a child in respect to food, with regard to which there could be but one opinion, and neglect of medical treatment, as to which there might be many opinions; and cited the General Epistle of Saint James (v. 14–15) upon which the Roman Church

founds the doctrine of extreme unction and the Mormons and "Peculiar People" rest their practice of healing the sick by anointing and prayer only, The jury accordingly brought in an acquittal. In the like case of *Reg.* v. *Hurry* (1892), 76 C. C. C. Sessions Paper 63, a contrary result was reached, but in *Reg.* v. *Hines* (1874), 80 C. C. C. Sessions Paper 309, Baron Pigot expressed a strong opinion that the indictment of a parent for omitting to provide proper and sufficient medicine could not be sustained. "That he may be one of those persons who have very perverted views and very superstitious views, and may be altogether mistaking that doctrine of Scripture from which he has taken his course of proceeding in this case, may be perfectly true; but that there is anything in the nature of a duty neglected, that is, a duty which he knew or believed to be such, in this instance I am clearly of the opinion the evidence does not show." If the community recognizes medicine as a necessity, it is questionable whether the parent's opinions should be considered, but the strength of the above argument is recognized by Coleridge, C. J., in *Reg.* v. *Downs*, [1875] 13 Cox C. C. 111, although a conviction was there sustained because of the Statue 31 & 32 Vict. c. 122, s. 37. This makes it an offence punishable summarily, if any parent willfully neglects to provide medical aid for his child, being in his custody, under the age of fourteen years, whereby the health of such child shall have been seriously injured. The weight of opinion in these cases is clearly to the effect that at common law medicine is not a necessity in the sense that food or clothing are, and that a parent will not be held responsible for withholding it if actuated by honest though erroneous motives. In the recent case of *Queen* v. *Senior*, the prisoner was indicted for neglecting to provide medicine for his nine months' old child, who had died of diarrhœa and pneumonia. The father was in most respects kind and careful but entertained an exaggerated idea of the power of prayer, and, like the Christian Scientists, fancied the use of medicine indicated a want of faith in the Lord. The Court of Queen's Bench in Banc sustained a verdict of manslaughter, founded on the Statute 57 & 58 Vict. c. 41, s. 1, which provides that "if any person over the age of sixteen years, who has the custody, charge, or care of any child under the age of sixteen years, wilfully . . . neglects . . . such child . . . in a manner likely to cause such child unnecessary suffering, or injury to its health, that person shall be guilty of a misdemeanor." It is observable that medicine is not mentioned in this act which supersedes the earlier statute, and the court remarked that "the question were narrowed down to whether his failure to provide medical aid could be called neglecting the child so as to cause injury to its health." Lord Russell, C. J., said, "I agree with the statement in the summing up, that the standard of neglect varied as time went on, and that many things might be ligitimately looked upon as evidence of neglect in one generation, which would not have been thought so in a preceding generation, and that regard must be had

to the habits and thoughts of the time. At the present day, when medical aid is within the reach of the humblest and poorest members of the community, it cannot reasonably be suggested that the omissions to provide medical aid for a dying child does not amount to neglect." This ingrafting upon earlier decisions is accentuated by the closing paragraph—"I wish to add that I dissent entirely from the view attributed to Pigott, B., in *Reg.* v. *Hines*, and I was not satisfied that, in the present case, there was not sufficient evidence, at common law, to justify a conviction." We thus have a decision that failure to provide medicine for a child is culpable neglect in the parent, and a strong intimation that it would be deemed such neglect as to warrant a conviction of manslaughter at common law. The thought naturally suggests itself as to how far this decision may be applied to Christian Science practitioners. If the view be accepted that an attempt to cure by prayer is foolhardy presumption or gross negligence, it would seem in accordance with American decisions (*Com.* v. *Pierce*, 138 Mass. 165 (1884)), that a Christian Scientist who advertises himself as a healer of diseases would be culpable if, in the face of death, he were to apply no other remedy. Further decisions will be watched with great interest for a solution of this problem which is one of practical importance in those states where spiritual treatment of disease is held not to be covered by statutes regulating the practice of medicine.

INFANT AS BAILEE. A recent decision in the Supreme Court of Nebraska (*Churchill* v. *White*, 78 N.W. 369) has augmented the weight of authority with respect to this class of cases by holding an infant (nineteen years of age) liable in tort for injuries done to a hired horse and buggy. The contract of bailment, it appeared, contemplated a drive of five miles to a definite place and return, in breach of which the defendant drove fifty miles in an entirely different direction and returned with both the horse and buggy damaged.

The court affirmed the ruling of the lower court, that "the rule that one who hires property of this kind for one purpose, and uses it for an entirely different purpose than that contemplated by the parties in the contract of hiring, is liable for any harm that may happen to it while using it, applies to minors as well as adults."

This decision is in strict accordance with the trend of decisions now followed in most states. The contrary doctrine, so strongly upheld in Pennsylvania, is emphatically expressed by Rogers, J., in *Penrose* v. *Curren*, 3 Rawle, 351 (1832). "The foundation of the action is in contract, and, disguise it as you may, it is an attempt to convert a suit originally in contract into a constructive tort, so as to charge the infant." This result is reached by a strict adherence to the rule which frees infants from liability on contracts for other than necessaries; it originated in the desire of courts to protect or shield infants from the consequences to which their youth and credulity might lead them. But when it

appears that the infant has committed a wilful tort, entirely distinct from the contract of bailment, the reason for such a protection should cease. "Where the infant stipulates for ordinary care in the use of the thing bailed, but fails from want of skill and experience and not from any wrongful intent, it is in accordance with the policy of the law that this privilege, based upon his want of capacity to make and fully understand such contracts, should shield him." (*Eaton* v. *Hill*, 50 N. H. 235, 1870.) But when the property is bailed to the minor for a specific purpose, and he uses it for a different purpose from that for which it was bailed, the bailment is thereby determined; and if the wrongful act determines the contract, why can tort not be maintained for the act, which is entirely independent of the contract? Truly the tort, though concerned with the subject-matter of the contract, is such that, but for the contract, there would have been no opportunity for committing it; yet it is, nevertheless, independent of the contract in the sense of not being an act contemplated by it, or being an act expressly forbidden by it. (Pollock, Contracts, p. 55.) Only for the purpose of measuring the duties between the parties is the tort related to the contract, and only so far can it be "an attempt to disguise the contract."

BOOK REVIEWS.

A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW. By JAMES BRADLEY THAYER, LL.D., Weld Professor of Law at Harvard University. Boston: Little, Brown & Co. 1898.

Stephen's Digest of the Law of Evidence is so popular with the profession in this country and its use in American law schools is so general that, when a new book on evidence appears, one almost unconsciously compares it with the work of the distinguished Englishman. In the present instance, however, the comparison becomes a contrast because the two books are so unlike. Stephen tells us in his preface that a study of Mill's Logic furnished the starting point for his attempt to state the law of evidence. He deliberately undertook to treat the subject as "one case of the general problem of science, namely, inferring the unknown from the known." His book, therefore, is the result of undertaking to "point out in detail the very close resemblance which exists between Mr. Mill's theory and the existing state of the law." It is dangerous to conduct an historical investigation with a view to the establishing of a striking and attractive analogy. The investigator is almost certain to "force a balance," as the accountants say. It is not surprising, therefore, to find that Stephen has failed to lay due stress upon the fact that, at the common law, it is *the jury* that is seeking to ascertain the unknown. Stephen confounded the logical processes of the individual with the operation of that body